International Association of Bridge, Structural and Ornamental Iron Workers, Local No. 433, AFL–CIO *and* Barry-Wehmiller Company. Case 21–CC–3093

May 31, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND OVIATT

On December 27, 1990, Administrative Law Judge William J. Pannier III issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in answer to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, International Association of Bridge, Structural and Ornamental Iron Workers, Local No. 433, AFL–CIO, San Bernardino, California, its officers, agents, and representatives, shall take the action set forth in the Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In agreeing with the judge that the Respondent violated Sec. 8(b)(4)(i) and (ii)(B) of the Act, we find it unnecessary to rely on the judge's discussion of the message on the picket signs and on the handbills distributed in conjunction with the picketing.

[3] We agree with the judge that a broad order is warranted in this case because the Respondent has a ''proclivity to violate the secondary boycott provisions of the Act.'' *Iron Workers Local 433 (United Steel)*, 293 NLRB 621, 623 (1989), and *Iron Workers Local 433 (Benchmark Contractors)*, 285 NLRB 1089, 1093 (1987).

Jean C. Libby, Esq., for the General Counsel.
David A. Rosenfeld Esq. (Van Bourg, Weinberg, Roger & Rosenfeld), of San Francisco, California, for the Respondent.
Peter Szabadi, Esq. (Raitt & Dobrin), of Los Angeles, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM J. PANNIER III, Administrative Law Judge. I heard this case in Los Angeles, California, on March 29, 1990. On January 18, 1990, the Regional Director for Region 21 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing, based on an unfair labor practice charge filed on December 7, 1989,[1] alleging violations of Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act). All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs. Based on the entire record, upon the briefs that were filed on behalf of the parties, and on my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACTS

I. JURISDICTION

Barry-Wehmiller Company is located in St. Louis, Missouri, and engages in the business of manufacturing large machinery for the brewing industry and of laying out design and providing project management services for beverage plants. On September 22, it received a contract in the amount of $835,755 from Pepsi-Cola Metropolitan Bottling Company, Inc., to perform construction management and can line and support equipment installation at Riverside, California, where Pepsi-Cola would be constructing a beverage plant. In turn, it subcontracted work to various contractors, including pipefitting, to Southern Mechanical, Inc., rigging to Halbert Brothers, Inc., and installation of machinery conveyors and fabrication of platforms to Sentry Equipment Erectors, Inc. The latter is located in the State of Virginia and the dollar volume of its subcontract for work at the Riverside site was approximately $140,000. The alleged unlawful conduct occurred during the time that Sentry had been working at that site. In light of the foregoing facts, I conclude that at all times material, Barry-Wehmiller, Southern Mechanical, Halbert Brothers, and Sentry Equipment have been persons within the meaning of Section 2(1) of the Act and employers engaged in commerce or in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

At all times material, International Association of Bridge, Structural and Ornamental Iron Workers, Local No. 433, AFL–CIO (Respondent) has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Issues*

The relevant background facts in this case, which allege that unlawful secondary picketing occurred on December 7 and 8, are not disputed. Highway 215 is a main thoroughfare running north and south in Riverside. One exit from it on, at least, the west side is East Ridge Avenue. After having departed Highway 215 at that exit and driving west on East Ridge for approximately one-quarter to one-half mile, an intersection with Sycamore Canyon Boulevard is reached. Between Highway 215 and that intersection, at the time material to this proceeding, there were some commercial buildings on the northside of East Ridge and a substation under construction on the southside. However, the land west of the intersection was undeveloped and, from the intersection, East

[1] Unless stated otherwise, all dates occurred in 1989.

Ridge was an unpaved gravel road that continued for approximately 600 feet further west. Similarly, Sycamore Canyon was an unpaved gravel road, with no development or businesses fronting on it to the north or south of the intersection.

In 1989 Pepsi-Cola commenced constructing its bottling plant on the southwest corner of that intersection. Thus, the northside of Pepsi-Cola's lot was bordered by the unpaved gravel portion of East Ridge and the eastside of that lot was bordered by that portion of Sycamore Canyon south of the intersection. No other businesses or, so far as the evidence discloses, construction existed west of that lot on East Ridge nor on Sycamore Canyon Boulevard south of Pepsi-Cola's lot.

As noted in section I, supra, Pepsi-Cola awarded the contract to Barry-Wehmiller for can line and support equipment installation. The latter named Joe Wilhelm as its project manager for that project. Although he first reported to Riverside on November 6, it is not disputed that in October, while still in St. Louis, he received a telephone call from Respondent's business agent, Bobby R. Harmon, who introduced himself and inquired about the identities of the subcontractors and the work that they would be performing for Barry-Wehmiller at the Riverside site. Wilhelm explained that both union and nonunion subcontractors had been awarded contracts for work at the site, but declined to disclose the subcontractors' identities.

Sentry commenced working at the Pepsi-Cola site for Barry-Wehmiller on November 6 and worked there continuously for the remainder of the year, as well as during early 1990. Its workers are not represented by a labor organization. On November 21, picketing by four or five individuals occurred in the intersection of East Ridge and Sycamore Canyon. There is no allegation that this activity violated the Act. However, it led Wilhelm to erect three reserved gates on November 29. Only one of those gates was located at an entrance on East Ridge, approximately 500 feet west of the intersection. At that location, Wilhelm posted a sign reciting that the gate was reserved for the exclusive use of employees and suppliers of Barry-Wehmiller and Sentry and, further, that all others must enter the site from Sycamore Canyon Boulevard.

On Sycamore Canyon, approximately 350 feet south of the intersection, an entrance was designated as the reserved gate for employees, suppliers, and subcontractors of the construction contractor for the project, Al Shankle Company. Another entrance was established further south on Sycamore Canyon and was designated, on a sign erected there, as the gate reserved for employees and suppliers of Halbert Brothers and Southern Mechanical. That sign further directed employees and suppliers of Barry-Wehmiller and Sentry to enter the project from the gate on East Ridge Avenue.

Notice of creation of this reserved gate system was provided by telegram sent, inter alia, to Respondent on November 29. In pertinent part, that telegram recites:

> A SEPARATE GATE HAS BEEN SET UP: GATE ''A,'' LOCATED ON EAST RIDGE AVENUE AT THE JOBSITE FOR THE EXCLUSIVE USE OF SENTRY AND BARRY-WEHMILLER, ITS SUPPLIERS, DELIVERIES AND PERSONNEL. ALL OTHER CONTRACTORS, THEIR PERSONNEL AND SUPPLIERS ARE PROHIBITED FROM USING THIS GATE AND ARE REQUIRED TO USE GATES ''B'' & ''C'' LOCATED ON SYCAMORE CANYON BLVD AT THE JOBSITE. NO SUPPLIERS OR PERSONNEL OF SENTRY OR BARRY-WEHMILLER SHALL BE PERMITTED TO USE GATES ''B'' & ''C.'' ALL OF THE GATES HAVE BEEN POSTED REFLECTING THESE RESTRICTIONS AND THE RESERVED GATE SYSTEM WILL BE STRICTLY ENFORCED.

There is no contention of impropriety in this telegramic notification to Respondent concerning creation of the reserved gate system. Cf., *NLRB v. Iron Workers Local 433*, 850 F.2d 551 (9th Cir. 1988).

On December 5 Wilhelm had erected on the northwest corner of the intersection a large ''directional sign.'' Accompanied by directional arrows, it recited that gate A was for Barry-Wehmiller and Sentry, that gate B was for Halbert Brothers and Southern Mechanical, and that gate C was for ''AL SHANKLE CONSTR. CO. EMPLOYEES [&] SUPPLIERS.'' Respondent argues that the directional sign is not adequate as a reserved gate sign, because it omits mention of suppliers for Barry-Wehmiller and Sentry. In addition, while it does not challenge the propriety of Barry-Wehmiller's creation of a reserved gate system and does not contest the adequacy of the signs that were placed at the reserved entrances, Respondent contends that the location of the primary gate, on East Ridge Avenue, ''was placed at a location so as to render Respondent's picketing totally ineffectual to bring its message to the public.''

After November 29 no picketing occurred at the site until the morning of December 7, when four pickets appeared in the intersection. Although there is some evidence of alterations having been written on the Al Shankle gate sign, by person or persons unknown, and while some evidence was adduced regarding particular persons who may have used the various gates, Respondent does not contend that the reserved gate system was tainted through usage of the Sycamore Canyon gates by employees, customers, or suppliers of Barry-Wehmiller or of Sentry.[2] Instead, it argues that on December 7 there was no reserved gate sign at the East Ridge entrance to the site. In this respect, it is not disputed that by that date the perimeter fence for the site had been taken down to allow paving work on the site to be performed. Although Harmon testified that the East Ridge reserved gate sign had been taken down as well, Wilhelm denied that the sign had been taken down that day.

Undisputed is the evidence that from early morning until approximately 2 p.m. on December 7 the four pickets had been posted in the intersection. They carried signs asserting that Barry-Wehmiller and Sentry were performing work below standards established by Respondent. In addition, they distributed handbills stating, in pertinent part:

> GOOD UNION MEMBERS RESPECT PICKET LINES

[2] Of course, the system would not be tainted by neutral contractor usage of the East Ridge gate. *NLRB v. Broadcast Employees Local 31*, 631 F.2d 944, 952 (D.C. Cir. 1980). Nor would the system be tainted through neutral gate use by suppliers of support services, such as sanitation services, to all contractors, including Barry-Wehmiller and Sentry, on the site. See, e.g., *Iron Workers Local 433 (Chris Crane)*, 294 NLRB 182, 183–184 (1989), and cases cited therein.

A good union member is extremely careful when confronted with a picket line situation. WHEN A PICKET LINE IS ESTABLISHED on a job where he is working:

1. He LEAVES. He DOES NOT TALK—JUST LEAVES.

A GOOD UNION MEMBER KNOWS HIS RIGHTS

A. He has the right NOT to work behind ANY Picket Line

B. He has the right to decide for himself whether to walk off a job being picketed.

D. He knows that a two gate system means a PICKET LINE and he has the RIGHT NOT TO WORK, no matter how many gates that employer sets up.

Though scheduled to work that day, employees of Southern Mechanical declined to cross the picket line, by proceeding through the intersection to travel south on Sycamore Canyon to the entrance reserved for them. Moreover, several subcontractors of Al Shankle Company made that identical choice with the result that sprinkler fitting, tile work and electrical work was not performed on December 7. In addition to arguing that it was allowed to picket in the intersection that day because no reserved gate sign existed at the East Ridge entrance to the site, Respondent also contends that its picketing that day ''was at an intersection removed somewhat from the construction site,'' with the result that it was allowed to picket there ''with a sign advising the public of its dispute.''

The General Counsel alleges that the picketing as well as the handbilling, because it had been conducted in conjunction with that picketing, on December 7 violated the Act. Since it also is undisputed that picketing, though no handbilling, occurred on December 8, the General Counsel further alleges that the Act had been violated on that date, as well. However, that allegation is premised on the factual assertion that picketing had been conducted in the intersection on December 8. Respondent denies having picketed in the intersection on that date, contending that it had picketed only at the East Ridge Avenue entrance on December 8.

For the reasons set forth post, I conclude that the evidence is insufficient to establish that picketing occurred in the intersection on December 8. In contrast, a preponderance of the credible evidence supports the allegation that picketing, and ancillary handbilling, had been conducted there on December 7 and that it had been aimed at all employees and suppliers scheduled to work that day at the Pepsi-Cola bottling plant construction site, thereby violating Section 8(b)(4)(i) and (ii)(B) of the Act.

B. *Findings of Fact*

The primary dispute in this case is whether or not the reserved gate sign at the East Ridge Avenue entrance had remained standing on December 7. The only evidence that it had not was supplied by the testimony of Harmon. But his testimony to that effect was not advanced convincingly, was not supported by any other evidence, and tended to be contradicted by other testimony that he provided, as well as by certain other evidence. Accordingly, I do not credit his testimony that there had been no reserved gate sign at the East Ridge Avenue entrance on December 7.

Harmon admitted that on every occasion when he had visited the site after November 29, including on December 6, the reserved gate sign had been standing at the East Ridge Avenue entrance. Yet, when he initially was, as it were, walked through his actions upon arriving at the site at 5 or 5:30 a.m. on December 7, his unaided account showed that Harmon had directed picketing at the intersection without regard to the presence or absence of a reserved gate sign at the East Ridge entrance:

Q. And what did you first do when you arrived at the job site?

A. I got out of my car.

Q. And then what?

A. I went over and talked to my pickets.

Q. Then what?

A. Then I put a picket line up.

Q. And where did you put the picket line up?

A. On the 7th, right on front of where it says Gate A, B and C.

JUDGE PANNIER: The directional sign, in other words.

THE WITNESS: Yes.

Not until the subject was suggested to him did Harmon abruptly, and unconvincingly, add that, yes, he had checked at the East Ridge entrance before having directed the pickets to patrol at the intersection.

Respondent's unconcern with the presence or absence of a reserved gate sign at the East Ridge Avenue entrance on December 7 is further demonstrated by a conversation that morning between Harmon and Robin Pikey, Barry-Wehmiller's project engineer. When, with reference to the intersection picketing and handbilling, the latter asked what was the problem, Harmon told her that it could be solved by ''Getting Respondent a signature from Sentry.'' It is not disputed that Pikey then showed Harmon a copy of the above-partially quoted November 29 telegram and said ''that he was welcome to move his pickets to gate A which is established for Barry-Wehmiller and Sentry Equipment.'' However, Harmon did not reply by pointing out that there was no reserved gate sign at that location, as he might have been expected to do were that a fact. Instead, so far as the evidence shows, he replied merely, ''Okay.'' Where the location of his pickets was being questioned, his failure to claim that he had not stationed them elsewhere because of a purported deficiency that day in the reserved gate system is strong evidence that, in fact, no such deficiency existed.

Significantly, when he testified, Harmon appeared to be especially concerned about the absence of perimeter fencing at the site on December 7. Thus, at one point, he testified: ''They were doing work all through here and on the 7th when I came out—like that, all this was tore down, the fence was gone, whatever was there. I turned around in this entrance way right here and backed out and there was no gate, no nothing there at that time then—.'' Later, he repeated that point, in the process explicitly pointing out that the absence of a fence, to him, meant that no reliably designated ''gate'' could exist:

Across here and down through here—you see there—there's no fence, no nothing, no sign pointed out down here, sir.

> I did not know where Gate A was but you could go around this building and post a gate anywhere down on this other side. So I took myself and put it at the point where it says Gate A that way, taking myself—when they put up a gate I would go to it. They did not have a gate up at the entry way where you say Gate A.

As the last portion of his quoted remark shows, it was the presence of a gate, as opposed to a sign, that had concerned Harmon on December 7. His testimony appeared to be premised on the belief, at least as of December 7, that no valid reserved gate system could exist without actual gates in perimeter fencing, because of the *possibility* of primary entry and exit at points along the perimeter other than a designated primary entrance: ''Well, I think if you could look at it you'll see there wouldn't be no fence up there if they walked out of their trailers.''

Of course, as a matter of law, perimeter fencing with actual gates is not a necessary prerequisite for establishing a valid reserved gate system. To the contrary, a valid system of reserved entrances to unenclosed premises suffices, so long as those entrances are observed and there is no improper entry and exit occurring at other points along the perimeter. See discussion, *Carpenters (Malek Construction)*, 244 NLRB 890, 894–896 (1979). Having apparently later been apprised of that aspect of the reserved gate doctrine, it appeared that, when testifying, Harmon attempted to construct a legally legitimate defense for the intersection picketing on December 7, claiming instead that no reserved gate sign had remained erect at the East Ridge Avenue entrance on December 7. I do not credit that testimony and, consequently, conclude that there had been a reserved gate sign at the East Ridge entrance on that date.

In contrast to the dispute concerning its presence or absence on December 7, there is no dispute that there was a valid reserved gate sign at that entrance on the following day. Harmon acknowledged that fact, testifying that after having ascertained as much when he had arrived at the site early on December 8, he had stationed his pickets at that entrance. Harmon denied that there had been any picketing in the intersection that day. However, the General Counsel alleges that picketing did occur there that day, at least during the early morning hours.

To support that allegation, the General Counsel presented only the testimony of Nick Padilla, the individual in charge of Southern Mechanical's pipefitting crew. However, Padilla's unsupported testimony was hardly a model of reliability with respect to the specifics of what he had done and seen that morning. In fact, he freely admitted that his recollection was uncertain concerning the events of December 8. Thus, when asked initially if he had seen pickets on December 8, Padilla replied that he had, but, ''I believe they moved to the farther gate, at the East Ridge entrance.'' Asked then if he had seen picketing at the intersection that day, Padilla responded, ''I'm not sure. I can't really remember.'' In the final analysis, Padilla never really did testify that he had actually observed picketing in the intersection on December 8, despite various different approaches tried by counsel in an effort to ascertain if he would do so.

For example, he testified that he could not see the East Ridge entrance from the point at which he turned off Highway 215 onto East Ridge and, further, he initially testified that he had been able to see the pickets immediately after he turned off Highway 215 on December 8. But the latter assertion was contradicted almost immediately by the very next question and answer:

> Q. So as you turned off the highway on December 8th, 1989, in the morning you saw the pickets?
>
> A. Yeah, within a block or—you know, after I turned I could see the pickets and see that it was going on, yes. [Emphasis added.]

In fact, without regard to his own location when he first saw the pickets that morning, he earlier testified specifically that he believed that the pickets had been at the East Ridge entrance when he had first seen them that morning:

> Q. And where did you see the picketers [sic]?
>
> A. I believe they moved to the farther gate, Gate A.
>
> Q. When you first saw them where were they?
>
> A. I'm not really sure, to tell you the truth. I'm not sure if they were—I'm pretty sure they were at Gate A. I—you know, I'm not sure. I can't really remember.
>
> THE WITNESS: Yeah, my best memory is that they were at Gate A.

During the course of a somewhat different approach to eliciting his testimony about the location of pickets on December 8, Padilla admitted that prior to the hearing he had told counsel for the General Counsel that he had seen pickets in the intersection on December 8. However, when asked why his testimony differed from what he earlier had told counsel, Padilla explained:

> Because I'm not really sure about—I— you know, I forget. I remember there was picketers. I can't remember if they were at Gate A or right at the front roadway on that—on Friday which—that was Friday. And I can't really remember exactly—I know they did move down to Gate A and I'm for sure it was Monday, but on Friday I can't remember—I mean, I can't say they were in the front, I can't say they weren't. I'm not sure. I—you know, it's been a long time— you know, I can't remember.

No prehearing affidavit had been taken from Padilla. No evidence was offered regarding the precise questioning that had led to his prehearing remarks about the pickets' location on December 8. Nor, in contrast to his testimony at the hearing, is there evidence that Padilla had been under oath when he made his prehearing remarks. Consequently, there is no basis for according greater weight to Padilla's unsworn and unparticularized prehearing remark than to his sworn testimony that he simply did not recall having seen picketing at a location other than the East Ridge entrance on December 8.

In evaluating Padilla's testimony regarding what he had seen on December 8, it cannot be said that he was attempting to testify in a manner that would favor Respondent. For he freely described the December 7 picketing in a fashion that supported the complaint's allegation concerning Respondent's conduct that day. Furthermore, two objective considerations completely undermine any possibility of relying on his uncertain recollection as a basis for concluding that intersection picketing had occurred on December 8. First, in contrast

to what had occurred on December 7—when intersection picketing had led employees of at least some subcontractors not to report for work at the site—there is no evidence that employees of any contractors other than Southern Mechanical had not reported for work on December 8.

Second, an even stronger indication that no intersection picketing had occurred on December 8 is provided by a comparison of Padilla's account with that of Wilhelm. The former testified that he had waited at the project until his crew had arrived at 7 a.m. on December 8 and, after a discussion with them about whether or not to work, ''By 7:30 I was a goner.'' Yet, Wilhelm testified that he had ''arrived at 7:00 o'clock'' on December 8, but had seen picketing at no location other than at the East Ridge entrance. There is no evidence that the pickets had changed the location of their patrolling after they had begun picketing on December 8. Consequently, Wilhelm's testimony tends to flatly contradict any account that intersection picketing had occurred during the morning on December 8.

In light of the foregoing considerations, I conclude that Padilla's testimony is not sufficiently reliable to support a conclusion that picketing occurred at any location other than at the East Ridge entrance on December 8.

C. *Analysis*

Not only are labor organizations under ''a duty to picket with restraint, to minimize its impact on neutral employers and employees,'' but where ''an established reserved gate system provides a reasonable alternative for effective communication with the primary employer and its employees, that system must be respected.'' *Electrical Workers Local 76 v. NLRB*, 742 F.2d 498, 502 (9th Cir. 1984). As set forth in subsection III,A, supra, Respondent contends that its picketing in the intersection on December 7 had been lawful because there had been no reserved gate sign at the East Ridge entrance that day. However, as set forth in subsection III,B, supra, I do not credit the testimony advanced to support that particular contention. Instead, a preponderance of the credible evidence shows that the sign remained erect at the East Ridge entrance throughout that day, as it had on previous and subsequent days.

Certainly the absence of a perimeter fence that day made it theoretically possible for employees and suppliers of Barry-Wehmiller and Sentry to enter and exit the site at any point along East Ridge, as well as along Sycamore Canyon for that matter. However, there is no evidence of even a single instance of such entry or exit at perimeter points other than at the East Ridge entrance on that or on any other day. Nor is there any evidence of other activity that could serve to taint the reserved gate system and allow Respondent to ignore its obligation to respect it when picketing on December 7.

As set forth in subsection III,A, supra, Respondent further argues that the East Ridge entrance had been so located that it prevented Respondent from effectively conveying its message to the general public. To support that argument Respondent points principally to the doctrine enunciated in *Electrical Workers IBEW Local 453 (Southern Sun)*, 237 NLRB 829, 830 (1979). In that case, to the extent pertinent here, the Board concluded that labor organizations are relieved of their normal obligation to comply with a reserved gate system whenever,

> the entrances reserved for the primary Employer would unjustly impair the effectiveness of [a labor organization's] lawful picketing to convey its message to [the primary employer's] personnel, suppliers, visitors, and the general public.

Yet, subsequent cases involving application of that limitation to the reserved gate doctrine have explained that, with reference to ability to appeal to the general public when picketing at the reserved gate, ''the union's right is only to picket where it finds the primary employer—and not, if the two are in different places, where it finds the general public.'' *Carpenters Local 33 (CB Construction) v. NLRB*, 873 F.2d 316, 320 (D.C. Cir. 1989). That conclusion serves to reinforce interpretation of the *Southern Sun* limitation in the underlying decision in which the Board stated that its own ''precedent does not require primary reserved gate placements calculated to maximize a picket's chances to reach members of the public.'' *Carpenters Local 33 (CB Construction)*, 289 NLRB 528 532 (1989). As a result, the *Southern Sun* limitation to the reserved gate doctrine requires no more than that primary gates permit picketing labor organizations to be ''able to convey [their] message effectively to 'all within the legitimate direct appeal of [their] picket sign[s].''' *Iron Workers Local 433 v. NLRB*, 598 F.2d 1154, 1160 fn. 8 (9th Cir. 1979).

Here, the primary gate had been located on one of the two principal roadways bordering the bottling plant construction site. There is no evidence that relocation of the primary entrance to Sycamore Canyon would have better enabled Respondent to legitimately publicize its dispute. Furthermore, there is no evidence of restricted public use of East Ridge west of the intersection. Nor is there any evidence that the reserved gate entrance had been created on that avenue as some sort of ploy to frustrate Respondent's ability to communicate its message effectively to all those to whom its pickets could appeal legitimately: that the East Ridge entrance had been situated to create the type of confusion inherent in the purported primary gate that had been erected in *Southern Sun*. In these circumstances, there is no basis in this record for concluding that picketing at the East Ridge entrance would preclude Respondent from conveying its message ''to all within the legitimate, direct appeal of its picket sign.'' *Southern Sun*, supra.

Respondent's remaining two arguments require no extended discussion. It hardly can be maintained with persuasion that the intersection is removed, even ''somewhat,'' from the bottling site project. After all, it adjoins the northeast corner of that site.

Nor can it be persuasively argued, at least without supporting evidence, that omission of the word ''suppliers'' from the Sentry portion of the directional sign both rendered that sign invalid as a reserved gate sign and, also, caused confusion fatal to the entire reserved gate system. The directional sign was no more than an aid for locating the separate entrances for primary and neutral employers. Gate signs had been erected at each of those separate entrances and Respondent has not challenged their adequacy as reserved gate signs. Further, Respondent has adduced no evidence that the reserved gate signs at those entrances did not clear up any confusion that the directional sign might have caused for a particular supplier. Indeed, Respondent presented no evi-

dence of even a single instance of such confusion caused to a supplier as a result of the wording on the directional sign and, more significantly, no evidence of even a single instance where a supplier to Barry-Wehmiller or Sentry entered or exited the site from Sycamore Canyon Boulevard.

In sum, while a preponderance of the evidence does not establish that picketing occurred at any location other than the East Ridge entrance on December 8, it does establish that picketing had been conducted in the intersection on December 7, despite the continued presence of a reserved gate sign at the East Ridge entrance on that date. Although the picket signs referred to employment standards, Respondent has neither contended nor shown that employment terms of Barry-Wehmiller or Sentry were substandard. Consequently, both the implied message of the picketing, and the explicit message of the above-quoted portion of the handbills distributed as part of the picketing, demonstrate that Respondent intended by its December 7 intersection picketing to cause a work stoppage by employees of neutral employers scheduled to work at the adjoining bottling plant construction site, thereby violating Section 8(b)(4)(i) and (ii)(B) of the Act.

CONCLUSION OF LAW

By inducing and encouraging individuals employed by Southern Mechanical, Inc., Halbert Brothers, Inc., and other persons engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform services, and by threatening, coercing, and restraining the above-named persons, and other persons engaged in commerce or in an industry affecting commerce with an object of forcing or requiring the above-named persons to cease doing business with Barry-Wehmiller Company and/or Sentry Equipment Erectors, Inc. and with each other at the bottling plant construction site at East Ridge Avenue and Sycamore Canyon Boulevard on December 7, 1989, International Association of Bridge, Structural and Ornamental Iron Workers, Local No. 433, AFL–CIO has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i) and (ii)(B) Section and 2(6) and (7) of the Act.

REMEDY

Having found that International Association of Bridge, Structural and Ornamental Iron Workers, Local No. 433, AFL–CIO has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act, I shall recommend that it be ordered to cease and desist therefrom and that it take such affirmative action as will effectuate the purposes of the Act. Specifically, in light of past instances of similar violations of that subsection of the Act, I shall recommend that a broad order issue.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

[3] If no exceptions are filed as provided by Sec. l02.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. l02.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The International Association of Bridge, Structural and Ornamental Iron Workers, Local No. 433, AFL–CIO, San Bernadino, California, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Inducing or encouraging any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities or to perform any services where an object thereof is to force or require the said person to cease using, selling, handling, transporting or otherwise dealing in the products of, or to cease doing business with, any other person.

(b) In any manner threatening, coercing, or restraining any person engaged in commerce or in an industry affecting commerce where an object thereof is to force or require said person to cease using, selling, handling, transporting, or otherwise dealing in the products of, or cease doing business with, any other person.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its office and meeting halls copies of the attached notice marked ''Appendix.'' [4] Copies of said notice, on forms provided by the Regional Director for Region 21, after being duly signed by its authorized representative, shall be posted by International Association of Bridge, Structural and Ornamental Iron Workers, Local No. 433, AFL–CIO immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by it to ensure that said notices are not altered, defaced or covered by any other material.

(b) Deliver to the Regional Director for Region 21 signed copies of said notice in sufficient number for posting by Barry-Wehmiller Company, Southern Mechanical, Inc., Halbert Brothers, Inc. and Sentry Equipment Erectors, Inc., they being willing, at all locations where notices to their employees are customarily posted.

(c) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT, nor will our officers, business representatives, business agents or anyone acting for us, whatever his title may be, engage in or induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in a strike or a refusal in the course of employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services where an object thereof is to force or require that person to cease using, selling, handling, transporting or otherwise dealing in the products of, or cease doing business with, any other person.

WE WILL NOT threaten, coerce or restrain any person engaged in commerce or in an industry affecting commerce where an object thereof is to force or require that person to cease using, selling, handling, transporting or otherwise dealing in the products of, or cease doing business with, any other person.

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL NO. 433, AFL–CIO